does not specifically allege that Verizon DC is refusing to make returned space available to other CLECs, or that it is doing so but failing to give credit to the first CLEC. AT&T's specific allegation is that Verizon DC, in effect, is not helping the first CLEC by marketing the space that has been returned, or by at least doing enough to make other CLECs aware of the existence of such space.

When CLECs discontinue use of Verizon DC collocation space and return it to Verizon DC, the parties agree that those CLECs are entitled to credit against their collocation payment obligations when another CLEC begins to use that space. The disagreement raised by AT&T concerns the adequacy of Verizon DC's efforts to make other CLECs aware that such space exists and that its use by a subsequent CLEC might save that CLEC substantial sums of money, because the first occupying CLEC has already paid substantial portions of the costs of preparing the space for collocation.

The evidence shows that Verizon DC generally makes availability of collocation space known by listing the offices at which there is no such space. In other words, Verizon DC does not affirmatively list available space that other CLECs have returned. The testimony also demonstrates that Verizon DC does respond to specific CLEC inquiries about returned space, when a CLEC initiates them. The evidence also shows that whether a second CLEC can make economical use of space returned by another CLEC depends on the second CLEC's specific requirements at particular Verizon DC locations. It is not reasonable to expect Verizon DC to possess advance knowledge about CLEC needs at a level that will allow it to predict whether existing or new space will best serve. Moreover, CLECs know as well as Verizon DC does that substantial space is likely to have been returned by others. They have the ability to raise inquiries about available space of all kinds, including that returned by other CLECs. In addition, a CLEC that has returned space has the ability to make other CLECs aware of its nature and location. Finally, the evidence demonstrates that CLECs do have an effective basis for determining the status of their returned space, from billing information routinely provided to them.

Therefore, no competitive harm arises from Verizon DC's failure to serve in a marketing or advertising role for CLECs who have returned space. There is no evidence indicating that Verizon DC fails to make such returned space available to other CLECs, that it fails to respond to CLEC inquiries about returned space availability, or that it fails to credit the returning CLEC properly when its space is used by another CLEC. This Commission concludes, therefore, that Verizon DC's conduct in this area of performance matter is consistent with its Checklist Item 1 obligations.

AT&T also asks that Verizon DC be required to note on the website where discounted space is available by central office and to develop procedures to prioritize space reassignment. AT&T also asks that the amortization period for credits to vacating CLECs be extended from 12 to 30 years.[77] This request incorrectly assumes that returned space must of necessity be cheaper for the next CLEC than its other alternatives. In addition, AT&T has failed to address the reason

[11] AT&T **Post Hearing** Brief, **p.** 12.

for extending the amortization period or to explain why that issue is not more properly a function of the collocation proceeding just completed in Formal Case No. 962.

This Commission finds that Verizon DC's policies and practices with respect to the treatment of CLEC-returned collocation space comport fully with its obligations under Checklist Item 1, pursuant to the requirements of Section 271(c)(2)(B)(i).

## C. Federal Collocation Tariff

### 1. AT&T

A second AT&T issue is Verizon DC's proposal to withdraw its federal collocation tariff. Verizon DC filed an application with the FCC in August of 2002 to discontinue expanded interconnection service. Under Verizon DC's proposal, carriers with federally tariffed physical collocation arrangements would no longer have access to the federally tariffed physical collocation supporting services. AT&T maintains that withdrawal would create an administrative burden for the CLECs.[78] AT&T asserts that the proposed changes affect critical rates, terms, and conditions for federally tariffed services, which are critical to provisioning collocation. AT&T further contends that the changes would create substantial administrative and billing burdens that could affect hundreds of collocations throughout the Verizon footprint.[79]

### 2. Verizon DC Reply

Verizon DC responds that this issue concerns its request to the FCC to amend a federal tariff, and is therefore not properly a part of a District of Columbia Section 271 proceeding." Also, AT&T did not contest this issue in the collocation tariff proceeding just concluded in Formal Case No. 962, where this issue more properly could have been raised.

### 3. Analysis and Conclusions

AT&T raises a concern that Verizon DC's current efforts to withdraw its FCC collocation tariff reflect upon the ILEC's compliance with Checklist Item 1 requirements." This allegation is not a proper issue for consideration by this Commission. The FCC has the sole responsibility for ruling on the merits of Verizon DC's request regarding a federal tariff. This Commission will not presuppose an FCC ruling that would be inconsistent with Verizon DC's federal obligations. The propriety of Verizon DC's withdrawal may be taken up directly with the FCC, either in the FCC proceeding addressing the tariff, or in the FCC's consideration of the Verizon DC Section 271 application.

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78 AT&T **Checklist Declaration at** ¶¶ 46-49.

79 AT&T **Checklist Declaration at** ¶¶ 47-48.

80 **Verizon DC Reply Checklist Declaration at** ¶¶ 26-27.

81 AT&T **Checklist Declaration at** ¶¶46-49 **and Verizon DC Checklist Reply Declaration at** ¶¶26-27.

This Commission finds that the pendency of a change to Verizon DC's federal collocation tariff does not provide grounds for a conclusion that Verizon DC fails to meet its obligations under Checklist Item 1, pursuant to the requirements of Section 271(c)(2)(B)(i).

## D. Single Point of Interconnection

### 1. Summary of the Evidence

No participant presented any prehearing filings addressing Verizon DC's obligation to provide CLECs with a single point of interconnection per LATA. However, this issue was addressed on cross-examination of Verizon DC by AT&T. AT&T also raised it in its brief.[82] The issue arose in AT&T's questioning of Verizon DC about a new Model Interconnection Agreement offered by Verizon DC that AT&T said it learned about several weeks before the hearings. Questioning by AT&T addressed the issue of whether Verizon DC is complying properly with its obligation to provide CLECs with a single point of interconnection in a LATA.[83]

Three tandem switches serve the Washington area LATA, which includes territory within the District of Columbia, Northern Virginia, and parts of Maryland. Verizon is moving to a network configuration that will use one of the tandems for traffic in each of these three portions of the LATA. Upon cross-examination by AT&T, Verizon DC conceded that the Model Interconnection Agreement would require trunking to all three tandem switches if **a** party wished its single point of interconnection to have the capability to exchange traffic with the two LATA tandem switches that serve areas other than the one where a CLEC has interconnected.[84] For example, if a CLEC were to interconnect at the tandem in the District of Columbia, it could not complete calls to customers served by the LATA's tandem switches in Maryland and Virginia, unless it made arrangements for trunking to them.

Verizon DC's witness was not aware whose responsibility it would be to pay for the trunks, but clearly suggested that the trunks would be considered to be on the CLEC's, not Verizon DC's, side of the single point of interconnection.[85] Verizon DC also says that the provisions questioned by AT&T, which are termed Geographically Relevant Interconnection Points ("GRIP"), do not appear in its current Model Interconnection Agreement and that it "may" seek voluntary agreement to GRIP in future negotiations with CLECs.[86]

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82 **Post** Hearing Brief of AT&T, pp. **15-24**

83 ***In the Matter of Developing a Unified Intercarrier Compensation Regime,*** Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); ***MCI Telecommunications Corp.*** 271 F.3d at 517-518.

84 Tr. at p. **124.**

85 Tr. **at p.** 126.

86 Verizon DC **Post** Hearing Brief, p. 9.

### 2. Analysis and Conclusions

AT&T questions whether the GRIP provisions in the new Model Interconnection Agreement violate Verizon DC's obligation to allow a single point of interconnection per LATA. Verizon DC describes the Model Interconnection Agreement as its opening point for negotiations, rather than as an inflexible demand. There was no evidence presented in pre-filed testimony and comments or during cross-examination that any CLEC is operating under these provisions at the present time; AT&T did not allege or present testimony that its own interconnection agreement with Verizon DC includes such a requirement or that Verizon DC has urged it to accept one in any negotiations that have taken place.

Whether an agreement with a GRIP provision ever will come before this Commission for review is therefore speculative. Should negotiation of future interconnection agreements stumble over this provision, federal law provides for arbitration in the context not of hypothetical concerns, but real, present issues of contest between ILECs and CLECs. The FCC has held that such procedures, rather than Section 271 approval proceedings, offer an appropriate means for addressing such matters."

Given the absence of a showing that Verizon DC engages in any pattern of holding to patently unreasonable positions as a strategy to force undue concessions from CLECs, this Commission concludes that hypothetical concerns about the potential future use of GRIP does not provide a basis for finding that Verizon DC fails to meet its obligations under Checklist Item 1, pursuant to the requirements of Section 271(c)(2)(B)(i).

[87] ***Memorandum Opinion and Order. Application by Bell Atlantic New Yorhfor Authorization Under Section*** *271of the* ***Communications Act*** *To* ***Provide In-Region,*** *InterLATA* ***Service in the State of New Yorh,*** 15 FCC Rcd 3953 1/76(1999) ("New York Order"); SBC Kansas/Oklahoma Order ¶234.

# IV. Checklist Item 2: Nondiscriminatory Access to Network Elements

## A. Verizon DC Declaration

### 1. General

Verizon DC states that it provides nondiscriminatory access to network elements separately and in combined form in the District of Columbia, as it does in New York, Massachusetts, Pennsylvania, and New Jersey, through its interconnection agreements with CLECs.[88] It uses the same network facilities to provide and to maintain UNEs to CLECs as it does to its end-users." Verizon DC provides UNEs including loops, dedicated local transport, and dedicated end-office and tandem switching ports on a standalone basis. Verizon DC also offers virtual and physical collocation in its central offices." The Company also offers combinations such as UNE-P and EELs.[91] This declaration also addresses OSS issues, but, given the particular focus placed upon them by the participants, this report addresses OSS matters later and separately.[92]

### 2. Analysis and Conclusions

Verizon DC presents evidence generally demonstrating that its provision of required UNE access is similar to the access provided in other Verizon jurisdictions, where the FCC already has granted Section 271 approval. The CLECs and OPC did not present substantial evidence challenging the types and levels of service provided by Verizon DC in connection with this checklist item. Therefore, based on Verizon DC's representations and, in the absence of material, specific defects in Verizon DC's offerings and performance with respect to UNE access, this Commission concludes that Verizon DC has demonstrated compliance with this checklist item, pursuant to the requirements of Section 271(c)(2)(B)(ii).

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88 Verizon DC Checklist Declaration at ¶ 96

89 Verizon DC Checklist Declaration at ¶ 97

90 Verizon DC Checklist Declaration at ¶ 98

91 Verizon DC Checklist Declaration at ¶ 100

92 See the Verizon DC OSS Declaration at ¶¶ 17-19. In summary, Verizon DC's assertions in this declaration about OSS were that a single set of Veriron OSS and interfaces serve the District of Columbia, Virginia, Maryland and West Virginia, and that Verizon DC provides the same support for CLECs in the District of Columbia as it does in these other states. Veriron DC also says that its OSS for the District of Columbia provides the same interfaces, change management processes and CLEC support features that the FCC has reviewed and approved in connection with Verizon's 271 applications in New York, Massachusetts, Connecticut, Pennsylvania, Rhode Island, Vermont, New Jersey and Maine.

## B. UNE Rates

### 1. AT&T

AT&T states that Verizon DC's Section 271 application should not even be considered until the Commission adopts lower permanent TELRIC rates.[93] It claims that the existing interim rates are too high to enable the CLECs to enter the local exchange market. AT&T argues that lower UNE rates are a prerequisite for mass-market competition and that the Commission should not consider Verizon DC's Section 271 application until lower UNE prices are in place and competition has had a chance to develop. AT&T urges this Commission to require Verizon DC to accept the results of the decision in Formal Case No. 962 without appeal or reconsideration, before receiving a favorable Section 271 recommendation. In support of its position, AT&T cited the fact that Verizon New Jersey ("Verizon NJ") challenged UNE rates in that state shortly after approval of the Section 271 application there, and the fact that Verizon Pennsylvania ("Verizon PA") filed for a doubling of UNE rates there shortly after receiving Section 271 approval.[94]

### 2. OPC

OPC states that the interim rates set by the Commission do not reflect Verizon DC's forward-looking costs, and they do not account for the declining cost trends that Verizon DC has experienced. The absence of final TELRIC-based rates poses a barrier to competitive entry and precludes Verizon DC from meeting this checklist item.[95] Additionally, OPC suggests that Verizon DC should be required to demonstrate that Verizon DC's "ExpressTRAK' functions properly to minimize errors in wholesale bills. OPC contends that the FCC has not reviewed this new ordering and billing system in connection with a Verizon 271 application, and Verizon has not yet fully implemented it in Virginia, Maryland or the District of Columbia.[96]

### 3. WorldCom

WorldCom argues that any UNE rate decision should not be relied upon to support Section 271 compliance, because there must be a period during which Verizon demonstrates its compliance with and implementation of that decision.[97] WorldCom cites the consultative report of the New Jersey Board of Public Utilities ("NJ BPU") as authority for the proposition that Verizon legal challenges to state commission-established UNE prices or attempts to change those prices may raise concerns about Verizon's compliance with applicable requirements.

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93 AT&T Checklist Declaration at ¶ 9.

94 AT&T Post Hearing Brief, pp. 8-9.

95 OPC Lundquist Declaration at ¶ 5.

96 OPC Lundquist Declaration at ¶ 20.

91 WorldCom Brief, pp. 8-10.

### 4. Verizon DC Reply

Verizon DC responds to OPC and AT&T arguments on the issue of UNE rates by pointing out that UNE rates will not be set in this proceeding; they were to be set in Formal Case No. 962. All of the pricing claims raised by the parties will be disposed of in that case, and the Commission should reject claims that Verizon DC is not compliant with Checklist Item 2.[98]

### 5. Analysis and Conclusions

A number of participants have correctly noted the importance of establishing cost-based UNE rates that conform to TELRIC standards. However, complaints about the existence of temporary UNE rates and whether they are properly based upon TELRIC principles and requirements are moot, because the Commission set permanent, TELRIC-based UNE rates in Formal Case No. 962. Order No. 12610.[99]

This Commission does not agree with the necessity or propriety of requests that Verizon DC be made to accept unconditionally the decision in Formal Case No. 962. Requiring that a party waive its rights to appeal, or its ability to make lawful requests before a decision-making body, is not an appropriate remedy except in the rarest of circumstances. No compelling reason for doing so has been shown to exist here. This Commission's responsibility is to establish UNE rates and to advise the FCC of the compliance of those rates with FCC requirements. Verizon DC, like any other party in interest, has the legal right to challenge these UNE rates or to petition the Commission to change them in the future.

However, the District of Columbia Code provides that once a petition for reconsideration is filed by a party to a proceeding, the order upon which the petition for reconsideration is based is stayed until the order on reconsideration is issued."[100] Verizon DC filed its application for reconsideration on January 3, 2003, without requesting such a stay. Thus, the rates in effect before the issuance of Order No. 12610 were the now-invalidated proxy rates, which are not TELRIC-compliant. Because no other rates are currently in effect in the District of Columbia, there are no TELRIC-based rates in the District of Columbia. Verizon DC has outlined a proposed solution to this problem, which includes the use of New York UNE rates benchmarked to the District of Columbia in interconnection agreement amendments. Because Verizon DC has not yet submitted an amended interconnection agreement to the Commission, the Commission has not yet had the opportunity to review any amendment. At such time that Verizon DC submits, and the Commission approves such interconnection agreement amendments, there will be UNE rates other than the proxy rates existing in the District of Columbia. The Commission may then be able to find that Verizon DC complies with Section 271(c)(2)(B)(ii).

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98 Verizon DC Checklist Reply Declaration at ¶¶ 29-31

99 ***Formal Case No. 962, in The Matter Of The Implementation Of The District Of Columbia Telecommunicarions Competition Act Of1996 And Implementation Of The Telecommunications Act Of 1996,*** Order No. 12610, rel. December 6,2002.

100 D.C. Code, 2001 Ed. § 34-604(b)

# V. Checklist Jtem 3: Poles, Ducts, Conduits, and Rights-of-way

## A. Verizon DC Declaration

Verizon DC must offer nondiscriminatory access to poles, ducts, conduits and rights-of-way under Section 271(c)(2)(B)(iii). Verizon DC states that it meets this checklist item through its application of the processes and procedures it has in place. It notes that it was providing 8,248 pole attachments and access to 1,886,669 feet of conduit as of April 30,2002. Verizon DC asserts that no carrier has requested access to Verizon DC's rights-of-way.[101] For the period of February through April 2002, Verizon DC indicates that it received only four applications for access to ducts and conduits. Verizon DC provided no licenses for pole attachments during that period.

## B. Issues Raised by CLECs and Other Parties

No party makes any declarations regarding this checklist item. Hence, the record in this proceeding is devoid of any evidence contradicting Verizon's declaration regarding this issue.

## C. Analysis and Conclusions

Verizon DC's declaration demonstrates that it is providing access to poles, conduits, ducts, and rights-of-way as requested by CLECs. No other participant challenges Verizon DC's representations with respect to this checklist item. Therefore, the Commission finds that Verizon has demonstrated compliance with this checklist item, pursuant to the requirements of Section 271(c)(2)(B)(iii).

[101] **Verizon DC Checklist Declaration at ¶ 105.**

# VI. Checklist Item 4: Local Loop Transmission From the Central Office to the Customer's Premises, Unbundled from Local Switching and Other Services

## A. Verizon DC Declaration

### 1. General

Verizon DC states that it provides local loops unbundled from local switching in the District of Columbia in the same way that it provides access in all other states where it has received Section 271 approval.[102] Verizon DC offers analog and digital 2-wire and 4-wire circuits, which CLECs can use to offer a full range of services, including plain old telephone service ("POTS"), Integrated Service Digital Network ("ISDN')), Asymmetrical Digital Subscriber Line ("ADSL") , High-Rate Digital Subscriber Line ("HDSL") , DS-I (1.544 Mbps digital transmission), and DS-3 (45Mbps digital transmission). Verizon DC also provides line sharing, and has agreed to engage in line splitting.[103] Verizon DC states that it has met the requirements for the installation and maintenance of such services as required by the associated metrics measurements in the DC Guidelines.[104] Verizon DC asserts that tests of hot-cuts in other jurisdictions have demonstrated that Verizon DC performs them efficiently and with a high degree of quality.'''

### 2. xDSL Loops

Verizon DC states that it provides the same digital loop ('xDSL") offerings in the District of Columbia as Verizon does in Pennsylvania, Massachusetts, New Jersey, and New York.[106] Referring to the C2C Guidelines, Verizon DC asserts that the six-day completion rate for xDSL orders in the District of Columbia was 98.72 percent for the period of February 2002 to April 2002. For xDSL orders, Verizon DC claims that the completion rate was 98.92 percent in cases where facilities were available. Verizon DC states that the "Percent Installation Troubles Within 30 Days of Installation" measurement for xDSL orders was 4.75 percent, while the POTS measurement was 8.54 percent for the same period.'" It also states that the total measured trouble rate on UNE xDSL loops was a very low and acceptable 0.50 percent from February to April 2002. The "Percent Missed Repair Appointment" metric measurement for the same time period was 4.48 percent for xDSL and 18.16 percent for POTS. The average-time-to-repair measurement for xDSL was 16.83 hours, as compared to 21.79 hours for the retail group.[108]

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102 Verizon DC Checklist Declaration at ¶ 121.

103 Verizon DC Checklist Declaration at ¶¶ 123-124.

104 Verizon DC Checklist Declaration at ¶ 127.

105 Verizon DC Checklist Declaration at ¶¶136-138.

106 Verizon DC Checklist Declaration at ¶ 141.

107 Verizon DC Checklist Declaration at ¶¶147-149.

108 Verizon DC Checklist Declaration at ¶¶150-152.

### 3. Line Sharing and Splitting

Verizon DC also contends that it provides line sharing to CLECs in accordance with the FCC's ***Line Sharing Order.***[109] Verizon DC states that it uses the same methods and procedures for line sharing that Verizon PA uses, which the FCC found to be satisfactory.[110] From February to April 2002, Verizon DC completed 98.65 percent of line sharing orders on time. The "Percent Missed Appointments-No Dispatch measurement was 1.35 percent for CLECs and 4.43 percent for Verizon DC's retail service. The measurement for "Percent Troubles Within 30 Days" was 1.74 percent for CLECs and 0.52 percent for Verizon DC. For xDSL maintenance on line sharing, Verizon DC reported an average of 14.61 hours to repair as compared to 23.83 hours to repair for the retail comparison group."' Verizon DC commits to providing line splitting in the District of Columbia as Verizon PA does in Pennsylvania in accordance with the FCC's ***Line Sharing Order.***[112]

### 4. Sub-Loops

Verizon DC notes that, for Pennsylvania, the FCC found that Verizon PA was providing proper and sufficient access to unbundled sub-loops. Verizon DC states that it is providing unbundled sub-loops in the same way in the District of Columbia as Verizon PA offers this product. Connection points include the main distribution frame ("MDF") at Verizon DC's central offices, the network interface device ("NID"), and the Rate Demarcation Point at the customer's premise.[113] Verizon DC also provides unbundled sub-loops at its remote terminal/feeder distribution interface and at DS-1 and DS-3 levels.

To facilitate interconnection and to provide feeder and distribution sub-loops, Verizon DC states that it has deployed Telecommunications Carrier Outside Plant Interconnection Cabinets ("TOPIC"). As of April 2002, Verizon DC states that it has entered into 35 distribution sub-loop offerings. Verizon DC also offers sub-loop unbundling for House and Riser Cable ("HARC") where Verizon DC owns the facilities. Verizon DC provides HARC on a time and materials basis for installation and repair. Verizon DC supplies a NID for the CLEC to connect to for service provisioning.[114]

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109 *In* ***the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition*** *Provisions of* ***the*** *Telecommunications* ***Act of 1996,*** Third Report and Order in CC Docket 98-147 and Fourth Report and Order in CC Docket No. 96-98 ("Line Sharing Order"), 14 FCC Rcd 20912 (1999).

110 Verizon DC Checklist Declaration at ¶¶153-154.

111 Veriron DC Checklist Declaration at ¶¶164-165.

112 Verizon DC Checklist Declaration at ¶ 167

113 Verizon DC Checklist Declaration at ¶ 169.

114 Verizon DC Checklist Declaration at ¶¶170-172

### 5. High Capacity Loops

Verizon DC states that it offers unbundled high capacity loops, including DS-1 and DS-3 levels. As of April 2002, Verizon DC had provisioned approximately 190 of these loop types. Verizon DC moves existing customers served on high capacity loops to other facilities when it is necessary to fill a CLEC's unbundled high capacity loop order. Verizon DC fills CLEC orders by providing the necessary equipment in the central office and by providing the correct equipment at the customer premises. Verizon DC also corrects conditions on existing copper facilities when necessary. Verizon DC states that its percent missed appointments for the period February to April 2002 for DS-I loop types was I.I1 percent, as compared to 9.58 percent for retail service. Verizon DC says that it provisioned no DS-3 loops during this time period. Verizon DC acknowledges that it did not make maintenance and repair reporting on these high capacity loops, because it found errors in the data gathering.[115]

### 6. EELS

Verizon DC states that it offers Expanded Extended Loops ("EELs") consistent with the offering required by the FCC in the Pennsylvania Section 271 Order.[116] No evidence was presented to this Commission that would contradict Verizon's claim.

### 7. Analysis and Conclusions

Verizon DC presents evidence generally demonstrating that its provision of required access is similar to what occurs in other Verizon jurisdictions where the FCC has already granted it Section 271 approval and where other states have advised the FCC that Verizon complies with the requirements of this checklist item, Section 271(c)(2)(B)(iv). The CLECs and OPC do not present substantial evidence challenging the types and levels of service provided by Verizon in connection with this checklist item. Therefore, based on Verizon DC's representations and, in the absence of material, specific defects in Verizon DC's offerings and performance with respect to local loop access, the Commission concludes that Verizon has demonstrated compliance with this checklist item.

Although the Commission has found Verizon DC to be generally in compliance with this checklist item, the parties have addressed specific issues that require additional Commission discussion. These issues are addressed below.

## B. "No Facilities" Claims

### 1. Allegiance

115 Verizon DC Checklist Declaration at ¶¶174-178

116 Verizon DC Checklist Declaration at ¶ 181.

Allegiance believes that Verizon DC rejects orders for these DS-I loops an inordinate number of times for "no facilities" reasons.[117] Verizon DC routinely rejects these orders for several reasons, but Allegiance contends that some rejections could easily be corrected to permit order completion.[118] Allegiance states that Verizon released a July 2001 letter to its CLEC customers outlining its no-facilities policy. Verizon states in the letter that it would reject UNE loop orders for any one of the following reasons:

- There is no existing repeater shelf in the central office location or remote terminal;
- There is no existing apparatus/doubler case;
- There is no riser cable or buried drop if a trench or conduit is not provided; or
- The copper cable is defective and there are no pairs available."'

Allegiance alleges that Verizon Virginia ("Verizon VA") admitted in the Virginia Section 271 process that it rejects 30 percent of all high capacity UNE loop orders, and this percentage is consistent throughout its region."' Allegiance also observes that Verizon Maryland ("Verizon MD") conceded in Maryland Section 271 proceedings that it does not reject retail orders due to a lack of facilities in cases where it is necessary to perform similar activities to provide the requested services.

Allegiance describes two reasons for Verizon DC order rejections ("no repeater shelf' and "no apparatus/doubler case") that could readily be eliminated through minor and inexpensive equipment additions or adjustments. Allegiance claims that it has attempted to resolve the problem, and has offered to pay the cost of the adjustments, but Verizon DC still has refused to change its policy.[121]

When it rejects an order, Allegiance says, Verizon DC gives two options: (1) cancel the order and reissue it at a later date when facilities are available; or (2) cancel the order and submit a separate one for special access, which is available as a tariffed service. Neither option is satisfactory to Allegiance; each causes Allegiance delay that its customers will not tolerate. In most cases, Allegiance says that it loses the customer.[122] Allegiance asserts that, if special access is available, it takes this option to retain the customer, but the price it pays Verizon DC is more expensive[123] for installation and for the associated monthly recumng charges ("MRCs"). As an example, Allegiance says that the Density Cell One monthly recurring charge is $187.18 for a UNE DS-1, as compared with a charge of $198.24 for special access. The UNE nonrecurring

117 Allegiance Affidavit at ¶ 4.

118 Allegiance Affidavit at ¶ **5**.

119 Allegiance Affidavit at ¶ 5.

120 Allegiance Affidavit at ¶ 6.

121 Allegiance Affidavit at ¶ 7.

122 Allegiance Affidavitat ¶ 9.

123 Allegiance Affidavit at ¶ 14.

charges are $61.22, while the comparable charge for special access is **$157.27.** Allegiance further alleges that Verizon rejects UNE orders for lack of facilities at significantly higher rates than other do RBOCs (*e.g.*, Verizon rejected 23 percent in May 2002, as compared to three percent for all other RBOCs combined).[124]

### 2. AT&T

AT&T objects to the three-step process it says CLECs must use to order high capacity loops. AT&T considers the process costly, burdensome, and untimely. AT&T has the same concern as Allegiance regarding the "no facilities" issue for DS-1 and DS-3 UNEs.[125] AT&T says that, after order rejection at step one, it must complete step two, which consists of placement of a special-access order. This step, AT&T notes, can involve provisioning delays of as much as two months. The third step in the process involves the conversion of the special access circuit, after it is provisioned as a retail service, to a UNE.[126] AT&T notes that Verizon has stated that it refuses to provision high capacity facilities as UNEs whenever construction is required. Because Verizon DC is able to self-define when facilities are available and when construction is necessary, it can reject whatever portion of the CLEC's order it deems appropriate to reject, according to AT&T.

AT&T would agree to resolution of the issue in separate proceedings, and asks that intrastate special access be priced at TELRIC-based rates. AT&T also requests the development of metrics and the institution of PAP payments for special access.[127] AT&T notes that UNE-comparable pricing for special access was precisely the remedy adopted by the Massachusetts Department of Telecommunications and Energy ("MA DTE") to address this problem.[128]

### 3. OPC

OPC argues that Verizon DC's performance for DS-I and DS-3 facilities demonstrates discriminatory behavior with respect to the "no facilities" issue, because Verizon DC treats CLEC DS-1 and DS-3 UNE loop and interoffice orders differently than those submitted by end-users.[129] OPC believes that, until Verizon DC corrects this imbalance, it cannot be found to have met this checklist requirement. OPC notes that Verizon RI has stated that it does not reject orders for DS-1 or DS-3 for its retail customers when facilities **are** not available.[130] OPC believes that Verizon DC's offering of special access when facilities are not available does not

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124 **Allegiance Affidavit at ¶ 17**

125 AT&T Nurse/Kirchberger **Checklist Declaration at** ¶ 27

126 AT&T Nurse/Kirchberger **Checklist Declaration at** ¶¶26-30

127 AT&T **Post Hearing Brief,** p. *25.*

128 AT&T **Post Hearing Brief, p.** 29.

129 OPC **Lundquist Declaration at** ¶ 32

130 **OPC Lundquist Declaration at ¶ 34**

provide equal treatment.''' OPC states that the Commission should find Verizon DC's provisioning policies and practices discriminatory and anti-competitive. OPC also recommends the institution of a performance measure addressing orders for which facilities are not available.[132]

OPC argues that a continuation of the current Verizon DC pricing policies will allow Verizon DC to over-recover costs, as compared with "more appropriate," TELRIC based rates.[133] OPC argues that the adoption of a CLEC-only special access tariff priced at UNE rates (similar to that adopted by the New Hampshire Public Utilities Commission) would address such a concern.

### 4. Verizon DC Reply

Verizon DC argues that it "… does not have an obligation to build new facilities or add electronics to existing facilities for the purpose of providing those facilities as an unbundled element."[134] Verizon claims that its DS-1 UNE provisioning policy is consistent with what the FCC requires. The CLEC argument that Verizon DC retail customers are getting preferential treatment is, according to the incumbent, a false one, because UNEs are not the same as services purchased by retail customers.[135] Verizon DC acknowledges that it does build new facilities under its special access tariff, but notes that it does so not just for its end-use customers, but for CLECs, as wholesale customers, as well.

Verizon DC contends that its duty is to charge uniform pricing only to similarly situated customers. In both the New Jersey and Pennsylvania Section 271 cases, where Verizon applied the same polices that it uses in the District of Columbia, the FCC found that Verizon did not violate FCC unbundling rules, and it did find checklist compliance.[136] Verizon DC recognizes that the FCC has issued a Notice of Proposed Rulemaking (the Triennial Review Notice) on the issue of facilities for high capacity loops; however, unless or until the FCC rules are modified, Verizon DC plans to continue to provide facilities according to current law.

Verizon DC believes that the Eighth Circuit Court of Appeals decision in *Iowa Utilities Board v. FCC* makes clear that ILECs need only unbundle their existing networks for use by competitors.[137] Verizon DC contends that the Eighth Circuit has ruled that a CLEC cannot require facilities to be improved or expanded to provide a UNE not otherwise available. Verizon

131 **OPC Lundquist Declaration at ¶ 35**

132 **OPC Lundquist Declaration at ¶ 36**

133 **OPC Post Hearing Brief,** pp. 37, 39.

134 **Verizon DC Reply Checklist Declaration at ¶ 35**

135 **Verizon DC Reply Checklist Declaration at ¶ 39.**

136 **Verizon DC Reply Checklist Declaration at** ¶¶ 42-44,

137 **Verizon DC Reply Checklist Declaration at** ¶42, **citing** *Iowa Utilities Board v. FCC,* **120** F.3d **753,** 812-12 (8th **Circuit** 1997), aff'd **in part and** rev'd **in part,** *AT&T Corp. v. Iowa Utilities Board,* 119 S.Ct. **721** (1999).

DC notes that its policies at issue here are the same as those found acceptable by the Pennsylvania, Virginia, and New Jersey commissions in Section 271 proceedings, where the FCC has passed favorably on these policies.[138]

### 5. Analysis and Conclusions

The law is clear that CLECs are entitled to access to the network that actually exists, but not to one as yet unbuilt. ILECs do not have an obligation to construct new facilities for the purpose of leasing them as UNEs. The principal facilities at issue involve the use of special-access services under state and federal tariffs, in lieu of high-speed UNE loops, in those cases where Verizon DC claims to have no existing facilities. Incumbents do have retail obligations to build, which both state and federal requirements underscore. Allegiance and OPC believe that the existence of these retail obligations forms a sufficient basis for requiring Verizon DC, in order to avoid acting in a discriminatory manner, to treat wholesale customers the same as it treats resale customers. In other words, they argue, if Verizon has an obligation to build facilities to serve an end user, it is discriminatory not to do so for a wholesale customer.

The problem with the analogy to retail offerings is that the obligation to construct for retail customers arises under distinct and separate sources and types of public service obligations, and has been implemented under a separate pricing regime; *i.e.*, those pricing arrangements the FCC has approved for federal tariffs or those pricing arrangements this Commission has made in connection with local exchange service. It would not be proper to use an underlying retail obligation to force construction, but then to use the wholesale TELRIC regime to price it. Verizon DC has not objected to providing new construction under circumstances where the pricing matches the source of the obligation to build. The evidence shows that Verizon DC does not discriminate in the application of its tariffed services; it makes them equally available to CLECs and to end users who qualify under tariff terms. Thus, when Verizon DC "constructs" facilities to provide its end users with retail tariff services, it is doing so exactly as it would for a CLEC. What Verizon DC does not do is to make retail services available under the wholesale terms and conditions applicable to CLECs. In turn, it does not provide its retail users with wholesale prices; if they take a retail service, they pay the retail price.

There is no escaping the fact that the core of the argument against Verizon DC's policy here is that it would be more economical for CLECs to have Verizon DC charge UNE prices for facilities than retail tariff prices for services. However, that is not the proper test to apply. The proper standard is whether Verizon DC's actions are discriminatory. The record here reflects that they are not. Whether the retail pricing structure for special access (or for that matter other facilities secured by CLECs under retail tariffs) remains sound is a separate issue. Deciding that issue here would constitute, in effect, a collateral attack on federal- and state-approved tariff rates. Those rates form, in the District of Columbia, part of an integrated cost recovery program that meets a number of objectives, not merely the pricing of every service at its true economic cost, whether TELRIC or not.

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[138] Verizon DC Reply Checklist Declaration at ¶¶ 43, 47, and 49.

This Commission here neither denies nor recognizes the wisdom of re-examining at some later date the District of Columbia retail service pricing regime in the context of impacts on wholesale serves. It is sufficient for current purposes that the Commission relies here on the evidence showing that retail and wholesale customers receive the same economic treatment for tariffed services.

In addition, no showing has been made that the price disparities between UNE prices and tariff prices have tangible, substantial anti-competitive impacts. All the evidence shows here is that the former are lower than the latter. Although such a disparity would tend to lower the profitability of services that a CLEC provides using retail services, that alone is not sufficient to demonstrate the lack of a reasonable opportunity to compete. A direct challenge to retail rates before this Commission or the FCC constitutes **a** far preferable means for discussing and dealing with such issues than would reliance upon the record made in this Section 271 application process. Therefore, this Commission concludes that the broadly based argument about discrimination in "no facilities" cases does not warrant a finding of non-compliance with any checklist item.

That leaves the much narrower question of what constitutes new construction, which is not required by the FCC, versus those simpler rearrangements and augmentations necessary to provide for the cross-connection of facilities, which are a routine and required part of making UNEs available for CLECs. The participants agree that simple cross connects and the addition of "cards" that provide the intelligence to allow cross-connection of facilities to work are within the scope of what Verizon DC will do to make UNE loops available. The disagreement is about what should happen when housings (small structures)[139] to allow those cross-connections are full or non-existent. In those cases, Verizon DC considers the addition of new housings to constitute construction activity leading to the creation of new UNEs, not merely the addition of cross-connection facilities to existing facilities to make them suitable for service as UNEs.

The first argument against Verizon DC's position is that the cross-connection costs are minimal. A related argument is that CLECs could agree to bear the cost of the facilities in whole or in part, thus mooting or at least substantially mitigating Verizon DC's concern about arbitrage with respect to the retail pricing regime. However, no evidence was presented to quantify what the costs are, so that this Commission could independently assess their magnitude. Moreover, it is not clear that the magnitude of the costs should be the deciding issue; at least equally relevant is the fact that new installations would consume space in Verizon DC's facilities, and perhaps at places (*e.g.*, apparatus cases out in the field) where space may well be at a premium.

It is troublesome to contemplate a policy that requires ILECs to provide CLECs with significant latitude to consume an ILEC's space or resources for the creation of new facilities, even in cases where CLECs agree to pay the costs of the required facilities. The collocation requirements that incumbents must meet certainly can impinge upon their future use of their own facilities, but the limits on the use of collocation are naturally constraining in their potential effects. Once a duty to house CLEC facilities beyond those required by collocation obligations is established, however, it is much more difficult to see how reasonable physical limits could be

[139] **Multiplexer shelves at central offices or customer premises and apparatus cases at junction points in the outside plant portion of the network were the cases cited**

placed on CLEC ability to command use of incumbent facilities to suit their desire to have the incumbent serve as both "landlord" and construction contractor for CLECs.

Allegiance has pointed out that at least some other ILECs are more liberal in defining what they will do to prepare facilities for operation as UNEs. However, the test should not be whether Verizon DC matches the conduct of the most generous ILEC, but whether its policy is reasonable, nondiscriminatory, and adequate in giving CLECs a reasonable opportunity to compete. Verizon DC has met the CLECs halfway on this issue. The commitment to provide cross-connection and cards, provided the housings for them exist, is, insofar as the record here discloses, sufficient to give CLECs a meaningful opportunity to compete. The adequacy of this commitment is underscored by the availability of a retail tariff option where those housings are not present.

The Commission concludes that Verizon DC's policies with respect to the construction or addition of facilities to allow it to provide UNEs to CLECs meet its requirements under this checklist item, in accord with the requirements of Section 271(c)(2)(B)(iv). The Commission also concludes that Verizon DC does not discriminate against competitors in the application of retail tariffed services that CLECs secure in order to provide their own services to end users.

## C. Provisioning Intervals

### 1. OPC

OPC argues that its review of Verizon DC's performance data from the Measurements Declaration discloses that Verizon DC's reported intervals for non-dispatch installations (both UNE loops and resale) are significantly longer for CLEC orders than for its own retail orders. OPC suggests that the Commission review several months worth of data before it concludes that Verizon DC is achieving parity on these metrics.[140] OPC asserts that, if Verizon DC's provisioning policies are not equitable, discrimination and resultant CLEC harm occur. OPC makes an argument similar to those of Allegiance and AT&T regarding the rejection of service requests when facilities are not immediately available, *i.e.*, that Verizon DC should be required to construct new facilities for wholesale customers in cases where it would do so to serve a Verizon DC retail customer.

### 2. Verizon DC Reply

Verizon DC disputes the significance to be placed on the fact that it has not achieved parity in provisioning durations under C2C Guidelines Metric PR-3-01, which involves non-dispatch loops for resale and UNE products. Verizon DC argues that such microanalysis can produce misleading results, because Verizon DC is providing parity service on an all-metrics basis. Verizon DC also notes that no CLEC filed comments or testimony expressing concern about its provisioning performance. Verizon DC contends that the FCC supports its argument

[140] OPC Lundquist Declaration at ¶¶22-25.

that it need not adhere to every unique sub-metric to show a satisfactory overall performance

### 3. Analysis and Conclusions

As part of its unbundling obligations, Verizon DC is required to provision a number of different loop types. OPC registered concern about provisioning only one of these loop types; *i.e.*, loops that can be provided without dispatching technicians. According to Verizon DC, the difference in results for Metric PR-3-01 is due to the differing natures of CLEC and Verizon's own orders; many of its own customer orders involve only the addition or change of simple, switch-based features (*e.g.*, call waiting), while there are no such orders for CLECs using UNE loops. The lack of complaint by CLECs in their pre-hearing filings and testimony underscores the Commission's conclusion that Verizon is not disadvantaging CLECs through any significant failure to provision loops on a timely basis.

The Commission concludes that Verizon DC's failure to meet this particular component of the DC Guidelines does not constitute a failure to meets its requirements under this checklist item, in accord with the requirements of Section 271(c)(2)(B)(iv). Moreover, the Commission is always free to revisit this issue in the future, should we begin to see evidence that local competition is being adversely affected by Verizon's failure in this regard.

## D. EELs

Extended Enhanced Loops ("EELs") provide CLECs with a UNE that consists of an existing loop cross-connected to an existing inter-office trunk facility, which permits a CLEC to provide for an end user a connection from its premises to a CLEC switch while no longer passing through the ILEC's switch. In some cases, the trunking portion of the facility operates at a higher capacity than the loop portion.[142]

In cases where the two facilities operate at different speeds, Verizon DC requires first an order for the higher speed interoffice facilities portion. Only after it is provisioned can a CLEC make a separate order for the loop portion. This split approach requires a CLEC to begin paying for a portion of the EEL as much as 15 days before the provisioning of the loop portion of the order provides it with the functionality of the UNE that it has ordered.[143]

### 1. AT&T

AT&T avers that Verizon DC's process for ordering EELs creates additional costs and delays for CLECs.[144] If the interoffice ("IOF") EEL portion is designed to operate at a different

[141] Verizon DC Reply Checklist Declaration at ¶¶ 50-52.

[142] The parties focused on a DS-I loop cross connected to a DS-3 trunk facility as an example

[143] AT&T OSS Declaration at 777; Verizon DC Checklist Reply Declaration at ¶¶56-58.

[144] AT&T OSS Declaration at ¶ 77.

speed from the loop portion, CLECs must take the IOF portion before the loop can be ordered. The interval for the succeeding turn-up of the loop portions of EELs may be as long as 15 days, depending on the applicable loop provisioning variables and intervals.[145] AT&T also asserts that Verizon DC does not permit the reuse of a customer's existing loop for EELs, even though Verizon DC allows this practice for UNE-L, UNE-P, and resale. Verizon DC rejects EEL orders if no redundant loops exist at the customer premises.[146] The process for ordering EELs, according to AT&T, creates additional piecemeal charges, and it extends the length of time to order the service.[147] In contrast, AT&T cites the Rhode Island and Massachusetts guidelines for CLECs as models for avoiding delays and added costs. AT&T believes that the Verizon DC process must be altered to allow for coordinated ordering and turn up of the IOF and loop portions of EELs, and to permit existing loops at the customer's premises *to* be reused.[148] AT&T notes that Verizon Massachusetts ("Verizon MA") was able to develop a manual work-around to address the administrative problems of accommodating multiple speed EEL orders simultaneously. This solution prevents CLECs from having to pay for an EEL before it becomes fully functional.[149]

### 2. Verizon DC Reply

Verizon DC states first that its EEL provisioning process is the same as those used in other states (citing Pennsylvania, New Jersey, and Delaware) where it has secured favorable state commission Section 271 recommendations. Verizon DC goes on to state that the vast majority of EELs (approximately 97 percent) have IOF and loop that operate at the same speed, in which cases both can be ordered on a single ASR. Verizon DC maintains that for EELs requiring two different speeds, its ordering process is logical and conforms to industry guidelines.[150]

Verizon DC also believes that it is appropriate to charge for the interoffice portion of an EEL as soon as it is turned up, even if the CLEC has not yet secured a functioning loop because Verizon DC has incurred costs, and its facilities have been removed from **use** for any other purpose. Verizon DC also expresses concern that a contrary practice could encourage CLECs to order an EEL's interoffice portion without having to place the loop portion of the order on a timely basis.'"

145 AT&T OSS **Declaration at ¶ 78.**

146 AT&T OSS **Declaration at ¶ 79.**

147 AT&T OSS **Declaration at ¶ 80.**

148 AT&T OSS **Declaration at ¶ 81.**

149 AT&T **Post Hearing Brief, p. 34.**

150 **Verizon DC Checklist Reply Declaration at ¶¶ 57-58.**

151 **Verizon DC Checklist Reply Declaration at ¶** 62.

### 3. Analysis and Conclusions

Verizon DC has demonstrated that the rare need for separate orders for each EEL portion arises from industry standard ordering procedures, not from requirements that it imposes unilaterally. The evidence on the record shows that 97 percent of EELs involve facilities of the same speed, which minimizes the number of cases where separate orders become necessary. The evidence supports the propriety of Verizon DC's separate order requirements. However, an established need for separate orders does not alone justify the initiation of charges for a UNE before it can be fully provisioned.

There are undoubtedly many UNEs whose provisioning activities extend over a significant period of time, and require substantial administrative coordination. Absent special circumstances, Verizon DC should not be able here to start charging CLECs before it delivers the required functionality any more than it does in the cases of other UNEs. To the extent that Verizon DC bears real costs associated with lags between ordering and provisioning, they should be reflected in the prices charged, not in the time at which the obligation to pay such prices commences.

Verizon DC does cite one special circumstance that requires consideration. It points out that CLECs could end up with the power to warehouse the trunk portions of EEL orders without having to pay for them, simply by deferring orders for the loop portions. However, this problem can be solved simply by requiring CLECs to place both portions of the order at the same time, in order to take advantage of the ability to defer payment initiation until both are provisioned. This approach would prevent the warehousing problem, while maintaining consistency regarding when the payment obligation begins.

The Commission intends to examine this issue further in current or future proceedings before the Commission. We believe the public interest will best be served by addressing this in a proceeding, rather than using it as a reason to oppose Verizon DC's entry into the long distance market.

## E. Line Splitting

### 1. Summary of the Evidence

No party's prehearing filings address a concern about line splitting. However, during cross-examination by WorldCom, Verizon DC acknowledged that it discontinues data services to a customer in those cases where a CLEC captures the voice portion of the service, and plans to provide it over the same loop that Verizon DC uses to provide data services.[152] WorldCom's brief argues that it is discriminatory and anti-competitive for Verizon DC to decline to continue providing its own xDSL service to a Verizon DC retail customer who switches to a CLEC for the voice portion of local exchange service. WorldCom argues that there is no technical reason

[152] Tr. **atpp.** 171-172

behind this policy; Verizon DC, for example, will continue to provide voice service when a CLEC takes over the data portion of service.[153]

### 2. Analysis and Conclusions

The record here does not disclose any technical reason to support Verizon DC's policy and it also demonstrates no basis for concluding that Verizon DC data service would become inherently uneconomical when a CLEC captures the end users' voice service. It is the Commission's intention to examine whether the denial of data services, which constitute an important retail service to District of Columbia customers, is contrary to our policies.

[153] WorldCom Brief, **pp. 38-40.**

# VII. Checklist Item 5: Local Transport From the Trunk Side of a Wireline Local Exchange Carrier Switch Unbundled from Switching or Other Services

## A. Verizon DC Declaration

### 1. General

Verizon DC states that it provides local transport unbundled from switching or other network elements under substantially the same processes in the District of Columbia as Verizon uses in Pennsylvania and New York. Existing District of Columbia interconnection agreements include specific terms, rates, and conditions that obligate Verizon DC to provide local transport unbundled from switching or other services. These terms and conditions commit Verizon DC to provide both dedicated and shared transport facilities in a manner that is consistent with FCC requirements.[154] Configurations for these transport arrangements include DS-1, DS-3, STS-1, OC-3 (Optical Carrier-3), OC-12 (Optical Carrier-12) and Synchronic Optical Network ("SONET") . Intervals for installation depend upon the number of facilities requested. As of April 2002, Verizon DC was billing for approximately 70 interoffice transport arrangements for more than five CLECs. Verizon DC states that it completed seven of eight interoffice transport orders during the three-month period ending in April 2002.[155] For shared transport, Verizon DC states that it is providing service for approximately 2,500 unbundled local switching ports used as part of UNE-P.[156]

### 2. Analysis and Conclusions

Verizon DC's evidence shows that it provides substantial levels of unbundled local transport in the District of Columbia, much as it does in Pennsylvania and New York, through interconnection agreements at various capacities. The CLECs and OPC do not present substantial evidence challenging the types and levels of service provided by Verizon DC in connection with this checklist item. Therefore, based on the information before us, the Commission determines that Verizon DC has demonstrated compliance with this checklist item, pursuant to the requirements of Section 271(c)(2)(B)(v).

## B. Dark Fiber

### 1. AT&T

For both Checklist Item 4 and Checklist Item 5, AT&T argues that Verizon DC's provisioning of dark fiber is cumbersome and often changes.[157] AT&T complains that Verizon

[154] Verizon DC Checklist Declaration at ¶¶190-191.

[155] Verizon DC Checklist Declaration at ¶¶192-200.

[156] Verizon DC Checklist Declaration at ¶203.

[157] AT&T Checklist Declaration at ¶15-22.

DC does not permit CLECs to reserve dark fiber strands for use at a later date, that Verizon DC requires all dark fiber runs to be point-to-point without any other connections, and that Verizon DC only fills orders on their due date. AT&T further states that Verizon DC will not give the CLECs an overview of the availability of dark fiber. AT&T also maintains that CLECs may not concurrently order from Verizon DC both the collocation arrangement and the dark fiber. Thus, by the time Verizon DC completes the collocation interval, associated dark fiber may no longer be available. Therefore, a CLEC may expend time and money to augment a collocation arrangement, only to find that the associated dark fiber is no longer available.

AT&T asks that this Commission require Verizon DC to adopt the terms and conditions approved in the FCC's recent ***Virginia Arbitration Order*** relating to dark fiber.[158] AT&T further requests that these changes be made part of a tariff, which would save CLECs the time and expense of having to modify their interconnection agreements.[159]

### 2. Verizon DC Reply

Verizon DC first argues that the CLECs should seek information about the availability of dark fiber through the interconnection agreement negotiation process. Further, Verizon DC notes that the FCC found that Verizon's Pennsylvania transport offerings, including dark fiber, complied with checklist requirements.[160] Verizon DC acknowledges that the FCC's ***Virginia Consolidated Arbitration Order*** addressed a number of dark fiber issues that are at issue here. Pursuant to this order, Verizon DC also acknowledges that it had to make certain changes in its dark fiber policy, including certain reservation procedures and a provision for state commission review prior to imposing limits on the availability of dark fiber. As a result, Verizon DC has modified its Model Interconnection Agreement to incorporate these changes. Verizon DC goes on to describe the process used in the District of Columbia to provide availability information to CLECs, and asserts that it is the same procedure that it uses in Pennsylvania.

Verizon DC describes a parallel provisioning dark fiber trial that it has in place in Virginia and Maryland with a requesting CLEC. It states that "[t]he purpose of these trials is to develop new processes, procedures, and system modifications so that, shortly after receipt of a collocation application, Verizon can accept and partially provision a CLEC's order for unbundled dark fiber even though the collocation is not yet ready."" Verizon DC also says that it makes the parallel provisioning option available to other carriers through interconnection agreement amendment.

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158 **AT&T Post Hearing Brief, p. 30, citing *Memorandum Opinion and Order*, CC Dockets Nos. 00-218, 00-249, and 00-251 (released July 17, 2002).**

159 **AT&T Post Hearing Brief, p. 32.**

160 **Verizon DC Checklist Reply Declaration at ¶¶ 86-87.**

161 **Verizon DC Checklist Reply Declaration at ¶¶ 98.**

### 3. Analysis and Conclusions

The FCC recently arbitrated a series of interconnection agreement disputes applicable only to Virginia. Its determination required a number of significant changes in Verizon's practices with respect to making dark fiber available to CLECs in Virginia. The specific Virginia issues that AT&T has cited as relevant here include:

- Verizon requires a three-stage order processing effort rather than a parallel two-stage one;[162]
- Verizon fails to permit CLECs to reserve dark fiber strands for future use, pending completion of the ordering process related to securing that dark fiber;
- Verizon allows only point-to-point fiber routing, which rules out available routes through intermediate locations;[163]
- Verizon does not permit dark fiber orders without a collocation agreement or special augments, which could cause delay and waste of investment; and[164]
- Verizon makes dark fiber strands difficult to locate, and does not provide a reasonable network overview of the availability of dark fiber.[165]

The evidence suggests that Verizon DC does agree to adopt in the District of Columbia the FCC's resolution of the disputed issues in the Virginia-specific arbitration. Verizon DC cited, for example, changes to the Model Interconnection Agreement, which it says address these commitments. No participant presented evidence that would challenge whether Verizon DC has made a commitment or of Verizon DC's sufficiency in responding to the dark fiber concerns raised in these proceedings.

However, three issues are of concern to this Commission. First, the Commission's conclusions in the interconnection agreement arbitration involving Yipes Transmission, Inc. ("Yipes")[166] differ in certain respects from those reached in the FCC's Virginia arbitration. Verizon DC is obliged to follow the decisions in Orders Nos. 12396 and 12562 when there is a conflict between these decisions and the results reached in the Virginia arbitration. Second, Verizon DC has stated on the record that the Model Interconnection Agreement represents only its starting point for negotiations. It is not clear that CLECs can secure the benefit of the changes to the Model Interconnection Agreement without being burdened with the need to address a

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162 AT&T OSS Declaration at ¶76; Verizon DC Checklist Reply Declaration at ¶¶86-87.

163 AT&T OSS Declaration at ¶76; AT&T Checklist Declaration at ¶¶15-19, 22 ; Verizon DC Checklist Reply Declaration at ¶¶86-87, Verizon DC Checklist Reply Declaration at ¶98.

164 AT&T OSS Declaration at ¶76; AT&T Checklist Declaration at ¶¶15-19; Verizon DC Checklist Reply Declaration at ¶¶86-87; Venzon DC Checklist Reply Declaration at ¶98.

165 AT&T Checklist Declaration at ¶¶17-18; Verizon DC Checklist Reply Declaration at ¶86-87

166 ***TAC I2 – Petition of Yipes Transmission Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon Washington DC,*** *Inc.,* Order No. 12396, rel. May 6, 2002 and Order No. 12562, rel. October 9, 2002.

potential host of other issues that Verizon DC would like to see included in new or amended interconnection agreements. Third, in other states, Verizon DC is participating in a trial of parallel provisioning of the collocation and fiber portions necessary to make dark fiber available to CLECs. That trial may provide important insights into the issues raised here.

In general, the Commission determines that currently, Verizon DC is providing sufficient dark fiber provisioning to meet this checklist requirement. However, the Commission concludes that the three issues mentioned above merit further investigation and research to determine whether improvements in Verizon DC's dark fiber offerings are necessary.

## C. "No Facilities" Claims

### 1. OPC

OPC makes **a** combined argument for Checklist Items 4 and 5, arguing that Verizon DC's construction policies discriminate against CLECs in the provisioning of loops and interoffice transport.[167] Those arguments are discussed in Checklist Item **4.**

### 2. Analysis and Conclusions

The same discussion of Verizon DC's construction obligation for loops **(see** above) applies to OPC's substantially identical argument under this checklist item. The FCC offered a clear statement of its views of this issue in the context of defining an ILEC's transport obligations:

> In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous transport network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not deployed for its own use.[168]

The Commission concludes that Verizon DC's policies with respect to the construction or addition of facilities to allow it to provide UNEs to CLECs meet its requirements under this checklist item, in accord with the requirements of Section 271(c)(2)(B)(v).

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167 OPC Lundquist Declaration at pp. **33-40.**

168 ***UNE Remand Order*** ¶324 (citing ***Local Competition First Report and Order,*** 11 FCC Rcd at **15722,745** 1).